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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-339

BUFFALO FORGE COMPANY,

*Petitioner,*

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,
LOCAL UNION NO. 1874, *et al.*,
LOCAL UNION NO. 3732, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA

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## INDEX


| | Page |
|---|---|
| INTEREST OF THE *Amicus Curiae* | 1 |
| PURPOSE OF BRIEF | 2 |
| ARGUMENT | 3 |
| CONCLUSION | 10 |


## AUTHORITIES CITED

CASES:


| | |
|---|---|
| *Armco Steel Corp.* v. *UMW*, 505 F.2d 1129 (4th Cir. 1974) | 2 |
| *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970) | 4, 7, 8 |
| *Buffalo Forge Company* v. *United Steelworkers of America, AFL-CIO, et al.*, 517 F.2d 1207 (2nd Cir. 1975) | 3 |
| *Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962) | 6 |
| *Inland Steel Company* v. *Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293 (7th Cir. 1974) | 2 |
| *Island Creek Coal Co.* v. *UMWA*, 507 F.2d 650 (3rd Cir. 1975) | 2 |
| *Mastro Plastics Corp.* v. *N.L.R.B.*, 350 U.S. 270 (1956) | 10 |
| *Monongahela Power Co.* v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC*, 484 F.2d 1209 (4th Cir. 1973) | 2 |
| *NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321 (3rd Cir. 1974) (*en banc*), *cert. denied*, 419 U.S. 1049 (1974) | 2 |
| *Pilot Freight Carriers, Inc.* v. *Local 391 Teamsters*, 497 F.2d 311 (4th Cir. 1974), *cert. denied*, 419 U.S. 869 (1974) | 2 |
| *Teamsters Local 174* v. *Lucas Flour Co.*, 369 U.S. 95 (1962) | 7 |
| *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957) | 6, 7, 8 |
| *United Electrical Workers* v. *N.L.R.B.*, 223 F.2d 338 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 981 (1956) | 5 |
| *Valmac Industries, Inc.* v. *Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975) | 2 |


STATUTES:


| | |
|---|---|
| 29 U.S.C. §104 | |
| 29 U.S.C. §185(a) | |


SECONDARY MATERIALS:


| | |
|---|---|
| R. Pound, *The Spirit of the Common Law* (1921) | 4 |
| S. Rep. No. 80-105, 80th Cong., 1st Sess. (1947) | 5, 9 |
| Wellington, *The No-Strike Clause and the Labor Injunction: Time for a Re-Examination*, 30 U. PITT. L. REV. 293 (1968) | 5 |

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With consent of the parties, the National Association of Manufacturers of the United States of America respectfully submits this brief as *amicus curiae* in support of the Petitioner.

### INTEREST OF *AMICUS CURIAE*

The National Association of Manufacturers ("NAM") is a non-profit, voluntary business association, organized as a membership corporation under the laws of the State of New York. Its members comprise manufacturing and

related concerns of all sizes located throughout the United States. The NAM, therefore, represents a substantial number of the nation's industrial employers.

Many of its members are signatories to collective bargaining agreements containing no-strike clauses. The usefulness of these clauses with respect to insuring continuous plant operations will be significantly diminished if the employer cannot have the no-strike clause specifically enforced in the sympathy strike situation. Accordingly, the NAM has a proper interest in the resolution of the issues before the Court in this case.

## PURPOSE OF BRIEF

The NAM does not intend to reiterate the arguments presented in Petitioner's Brief in support of its petition for writ of certiorari and Brief to the court below that the requested injunction does not conflict with Section 4 of the Norris-La Guardia Act and the work stoppage did involve an arbitrable dispute. While we agree with these arguments and the Third, Fourth, Seventh, and Eighth Circuits' decisions,[1] the purpose of this Brief is to show that reversal of the court below is equally appropriate on the ground that to grant the specific enforcement of the no-strike clause in the situation presented to this Court, is but to continue the reconciliation process with respect to the Norris-La Guardia

[1] *NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321 (3d Cir. 1974) (*en banc*), *cert. denied*, 419 U.S. 1049 (1974); *Island Creek Coal Co.* v. *UMWA*, 507 F.2d 650 (3d Cir. 1975); *Monongahela Power Co.* v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC*, 484 F.2d 1209 (4th Cir. 1973); *Pilot Freight Carriers Inc.* v. *Local 391 Teamsters*, 497 F.2d 311 (4th Cir. 1974), *cert. denied* 419 U.S. 869 (1974); *Armco Steel Corp.* v. *UMW*, 505 F.2d 1129 (4th Cir. 1974); *Inland Steel Company* v. *Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293 (7th Cir. 1974); and *Valmac Industries, Inc.* v. *Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975).



Act's anti-injunction provision and Section 301(a) of the Labor Management Relations Act.

## ARGUMENT

This case presents the question of whether an unqualified no-strike clause can be specifically enforced in the situation involving a sympathy strike. The court below stated that the work stoppage could not be enjoined because

> [t]he strike at issue in the instant case is not over a[n arbitrable] grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

*Buffalo Forge Company* v. *United Steelworkers of America, AFL-CIO, et al.*, 517 F.2d 1207, 1210 (2nd Cir. 1975). We believe that this position is untenable.

This Court should permit an employer to specifically enforce the no-strike provision in its contract with a union where the work stoppage is the result of the employees' refusal to cross a picket line set up at their employer's premises. The relief of specific performance must be obtainable even though the court makes the threshold determination that the situation does not present an issue arbitrable under the contract's arbitration provision.

Unless the equitable relief of specific performance is granted a clearly absurd situation results. The employer who is faithfully performing all of his contract obligations cannot have the court compel his employees and their union to honor the principal contractual promise they have made, *i.e.* that they will not strike. On the other hand, the employer who has allegedly broken his promise can maintain his operations by securing the specific performance of a no-strike clause when the strike is caused by the alleged breach because the issue of the employer's breach is one for resolution by the arbitrator. Furthermore, by allowing specific performance, this Court will promote the federal

labor law policy of achieving industrial peace. It will not be reversing the rule stated in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). Rather the Court merely will be continuing the process of accommodating Section 4 of the Norris-La Guardia Act to Section 301(a) of the Labor Management Relations Act ("LMRA") in light of the realities of modern labor-management relations.

The Norris-La Guardia Act was enacted to remedy a particular situation of which Congress disapproved—the wholesale issuance of injunctions against strikes without regard to the merits of the situations involved. During the forty years prior to the adoption of that act's anti-injunction provision, the federal judiciary decided labor relations issues not on the basis of a coherent and equitable body of labor law but on the basis of its personal predilections. Most of the federal judges maintained a judicial philosophy that required "uncompromising insistence upon individual interests and individual property" rights. R. Pound, *The Spirit of the Common Law* 37 (1921). A judge could freely apply his philosophy to the issue before him since at that time there were few collective bargaining agreements; neither the law nor the parties to the suit set forth the obligations of the employer and the employees. Consequently injunctions were issued freely for the benefit of the employer against strikes by employees and their new mutual aid organizations irrespective of the inherent propriety of the employees' actions. The anti-injunction provision established the statutory basis for controlling these judicial excesses and correcting the imbalance in favor of the employer that the courts had created.

Ultimately, however, the results of the anti-injunction statute became apparent; an imbalance with respect to the enforcement of rights and duties existed in favor of the unions. Unions could and did refuse to honor their contractual obligations. They were able to violate their collective bargaining agreements with impunity because of the Norris-La Guardia Act's anti-injunction provision. Congress, therefore, enacted legislation, *viz.*, Section 301(a) of the LMRA, designed to remedy this undesirable imbalance;[2] unions could be sued for breaches of their contractual obligations. Wellington, *The No-Strike Clause and the Labor Injunction: Time for a Re-Examination,* 30 U. PITT. L. REV. 293, 294 (1968).



Furthermore, Section 301(a) was enacted because Congress believed that making the collective bargaining agreement binding and enforceable upon both parties would

> promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.

S. Rep. No. 80-105, 80th Cong., 1st Sess. 17 (1947). In its attempt to create a climate that would foster industrial peace, Congress sought to promote the inclusion of no-strike clauses in collective agreements. The Senate Report states that a union "should have no reluctance in including a no-strike clause if it intends to live up to the terms of the contract." *Id.* at 18. For the employer, a no-strike clause that a union is obligated to perform is a vital element of the agreement, as it assures uninterrupted operation of the employer's business during the term of the agreement. "A no-strike provision is 'the chief advantage which an employer can reasonably expect from a collective labor agreement'." *United Electrical Workers* v. *N.L.R.B.,* 223 F.2d 338, 341 (D.C. Cir. 1955), *cert. denied,* 350 U.S. 981 (1956). Moreover, the no-strike clause is the principal concession

[2] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having a jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

the union can make in exchange for the many concessions made by management during the negotiations. The Report continues to say that "the improvement that would result in the stability of industrial relations [because of the no-strike clause's inclusion] is, of course, obvious." *Ibid.* This Court acknowledged that Section 301(a) reflects a congressional effort to promote industrial peace

> which would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance *that the contract they had negotiated* would be honored.

*Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 509 (1962) (emphasis supplied). It is apparent, therefore, that Congress was most concerned with assuring both the employer and the union that their contract would be enforced according to the terms reached by good faith negotiation.

Given the statutory premise that collective bargaining agreements are enforceable, the key question to be resolved by the courts was what remedies would be available to the party initiating a Section 301(a) enforcement suit? Congressional debate provides some evidence as to the nature of the remedies intended. In his remarks on Section 302 of the House bill (identical in all major respects to Section 301(a)) Congressman Barden stated that the provision "contemplates not only the ordinary lawsuit for damages but also such *other remedial proceedings,* both legal and *equitable,* as might be appropriate. . . ." 93 Cong. Rec. 3656-57 (1947). (emphasis supplied).

This Court has examined the scope of Section 301(a) in three important cases. In *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957) this Court construed Section 301(a) to permit federal courts to specifically enforce an arbitration clause if the collective bargaining agreement contained a no-strike clause because the employer's agreement to arbitrate disputes was presumed to be the *quid pro quo* for a no-strike clause. *Textile Workers* v. *Lincoln Mills, supra* at 455. Five years later in *Local 174 Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95 (1962), this Court stated that in an action for damages a no-strike clause could properly be read into a contract containing an arbitration clause, because a strike was inconsistent with the union's contractual duty to arbitrate. The next logical step in the interpretive process of Section 301(a) is found in *Boys Markets, Inc.* v. *Retail Clerks Union, supra.* In that case this Court permitted a court to enjoin a strike in violation of a no-strike clause if the underlying issue causing the strike was subject to resolution through the collective bargaining agreement's arbitration procedure.



Each of these cases indicates this Court's willingness to specifically enforce the mutually binding terms of the collective bargaining agreement, as written by the parties, so that the public policy goal of industrial peace through collective bargaining can be achieved.

The *Amicus Curiae* here asserts that the courts, consistent with the rationale of the foregoing Section 301(a) cases can order the specific performance of an unqualified no-strike clause even where the result of that order is to require a union to abandon a sympathy strike. Section 301(a) does not limit an employer's right to the specific performance remedy for a union's contract breaches to only those circumstances in which work stoppage is precipitated by a dispute which is subject to the collective bargaining agreement's arbitration provision. Furthermore, the anti-injunction provision of the Norris-La Guardia Act does not preclude the award of the traditional contract remedy of specific performance. The relevant legislative history does not suggest that Congress intended the statutory provision to prevent courts from directing unions to perform contractual obligations they had voluntarily undertaken. To so

limit the relief would be to frustrate the effectuation of the paramount and longstanding public policy that "collective bargaining contracts [are] equally binding and enforceable on both parties [to the agreement]." *Textile Workers Union* v. *Lincoln Mills, supra* at 454. Unless the employer can be confident that a no-strike clause will assure uninterrupted plant operation, there is little incentive for him to sign a labor agreement. *Ibid.* That assurance, which is the incentive to enter collective bargaining agreements, is the knowledge that Section 301(a) permits suits to satisfactorily redress breaches of the union's contractual obligation not to strike. The remedy of damages for breach of a no-strike clause is quite inadequate; "the employer's losses are often hard to calculate and . . . the employer may be hesitant to exacerbate relations with the union by bringing a damage action." *Boys Markets, Inc.* v. *Retail Clerks Union, supra* at 248 n. 17. The only adequate relief is the equitable remedy of specific performance of the no-strike clause. The availability of this equitable relief provides an incentive for entering labor contracts. This Court has recognized that if "the principal and most expeditious method by which the [fairly negotiated] no-strike obligation can be enforced [, specific enforcement,] is eliminated," the employer's incentive to concede issues of management prerogatives is substantially dissipated. *Boys Markets, Inc.* v. *Retail Clerks Union, supra* at 248.

Effective implementation of the federal labor policy reflected in Section 301(a) requires, therefore, that specific performance of no-strike clauses be available. The underlying rationale of the *Boys Markets* case is that in those situations where the public policy goal of encouraging industrial peace can best be achieved by means of specifically enforcing the collective bargaining agreement as it was written, the Section 301(a) policy must supersede the anti-injunction policy of the Norris-La Guardia Act. Implicit in the decision is the notion that the employer should receive



the benefit of his bargain. The employer relinquished his right to refuse to permit a neutral party to decide disputes arising under the agreement in exchange for the union's promise that its members would relinquish their right to withhold their services during the term of the contract.

The *Amicus* submits that to limit the relief of specific performance of a no-strike clause to those situations where the work stoppage is in response to an arbitrable grievance, would be to render a portion of Petitioner's and similarly situated employers' contracts illusory. The no-strike clause realistically is the *quid pro quo* for the *entire contract*. This is the only interpretation which the parties to the agreement could have contemplated. The union's promise not to strike is the principal promise that it can make to the employer. An unqualified promise not to strike means that employees will not withhold their services either in protest of a dispute which can be resolved through arbitration or in deference to a picket line maintained at their employer's place of business. In exchange for these assurances, the union receives numerous assurances that the employer will likewise limit its use of economic weapons. The employer's promise to submit grievances to a third party for resolution is but one of these. The employer relinquishes significant management prerogatives by agreeing to comply with the numerous contract provisions concerning the wage structure, promotion and lay off of personnel in a specific order, and fringe benefits. Unless specific performance of the unqualified no-strike clause is permitted, the employer is not given the full benefit of his bargain with the union in the sympathy strike situation. It is, therefore, apparent that if the employer is not assured that the union's no-strike promise is fully enforceable, the incentive to enter a collective bargaining agreement is diminished. That consequence is clearly contrary to the fundamental theory underlying Section 301(a): industrial peace through mutually binding labor contracts. S. Rep. No. 80-105, *supra*.

## CONCLUSION

This Court must not stop at the limits of *Boys Markets* in its process of developing the atmosphere in which "the industrial peace through enforcement of collective bargaining agreements" can be nurtured. It must not limit its perception of the realities of the labor-management relationship. It must recognize that in a contract like Petitioner's, the union has freely agreed not to authorize a strike or work stoppage under any circumstances;[3] it has legitimately contracted away its members' right to cease work in protest of an arbitrable grievance and in support of another employee group's protest. If the decision of the court below is affirmed, this Court will be accepting a conceptualization of the collective bargaining process which does not reflect reality. The no-strike clause is not the *quid pro quo* for the arbitration clause alone; it is given in exchange for *all* the employer's promises, that is, for the entire contract. Unless the no-strike clause is enforced in the sympathy strike situation, the collective bargaining agreement is not recognized fully and the goal of industrial stability underlying both Section 301(a) and the cases interpreting it cannot be achieved.

*Respectfully submitted,*

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[3] This union promise is subject to a very limited exception. *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270 (1956).